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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 HYPERMEDIA NAVIGATION LLC,
19 Plaintiff,
20 v.
21 GOOGLE LLC,
22 Defendant.
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Case No. 4:18-cv-06137-HSG

**STIPULATION AND ~~PROPOSED~~
ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION**

STIPULATION AND ~~PROPOSED~~ ORD. RE:
DISCOVERY OF ELECTRONICALLY
STORED INFO.
NO. 4:18-CV-06137-HSG

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1 (the formation date of Hypermedia Navigation LLC) and 60 days after the conclusion of this
2 case, including all appeals, will be preserved;

3 c) The parties have discussed the types of ESI they believe should be preserved and
4 the custodians, or general job titles or descriptions of custodians, for whom they believe ESI
5 should be preserved, e.g., “HR head,” “scientist,” and “marketing manager.” The parties shall
6 add or remove custodians as reasonably necessary;

7 d) The parties have agreed/will agree on the number of custodians per party for
8 whom ESI will be preserved;

9 e) These data sources are not reasonably accessible because of undue burden or
10 cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved
11 pursuant to normal business retention, but not searched, reviewed, or produced:
12

- 13 1. backup systems and/or tapes used for disaster recovery; and
- 14 2. systems no longer in use that cannot be accessed.

15 f) Among the sources of data the parties agree are not reasonably accessible, the
16 parties agree not to preserve the following:

- 17 1. voicemail messages
- 18 2. information from handsets, mobile devices, personal digital assistants, and
19 tablets that is duplicative of information that resides in a reasonably accessible
20 data source;
- 21 3. instant messaging;
- 22 4. automatically saved versions of documents and emails;
- 23 5. video and audio recordings;
- 24 6. deleted, slack, fragmented, or other data accessible only by forensics;
- 25 7. random access memory (RAM), temporary files, or other ephemeral data that are
26 difficult to preserve without disabling the operating system;
- 27 8. on-line access data such as temporary internet files, history, cache, cookies, and
28 the like;
9. dynamic fields of databases or log files that are not retained in the usual course
of business; and

1 10. data in metadata fields that are frequently updated automatically, such as last
2 opened dates.

3 **5. SEARCH**

4 a) The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or
5 earlier if appropriate, they will meet and confer about methods to search ESI in order to identify
6 ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.
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8 b) Each party will use its best efforts to filter out common system files and
9 application executable files by using a commercially reasonable hash identification process.
10 Hash values that may be filtered out during this process are located in the National Software
11 Reference Library (“NSRL”) NIST hash set list. Additional culling of system file types based
12 on file extension may include, but are not limited to: WINNT, LOGS, DRVS, MP3, MP4, AVI,
13 WAV, C++ Program File (c), C++ Builder 6 (cpp), Channel Definition Format (cdf), Creatures
14 Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading Style Sheet
15 (css), JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File (NICK), Office
16 Profile Settings (ops), Outlook Rules Wizard File (rwz), Scrap Object, System File (dll),
17 Temporary File (tmp), Windows Error Dump (dmp), Windows Media Player Skin Package
18 (wmz), Windows NT/2000 Event View Log file (evt), Python Script files (.py, .pyc, .pud,
19 .pyw), or Program Installers.
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21 c) Each party is required to produce only a single copy of a responsive document
22 and each party may de-duplicate responsive ESI (based on MD5 or SHA-1 hash values at the
23 document level) across custodians. For emails with attachments, the hash value is generated
24 based on the parent/child document grouping. A party may also de-duplicate “near-duplicate”
25 email threads as follows: In an email thread, only the final-in-time document need be produced,
26 assuming that all previous emails in the thread are contained within the final message. Where a
27 prior email contains an attachment, that email and attachment shall not be removed as a “near-
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1 duplicate.” To the extent that de-duplication through MD5 or SHA`-1 hash values is not
2 possible, the parties shall meet and confer to discuss any other proposed method of de-
3 deduplication.

4 d) No provision of this Order affects any inspection of source code that is
5 responsive to a discovery request and will be made available consistent with the protective
6 order governing this case.

8 **6. PRODUCTION FORMATS**

9 The parties agree to produce documents in the formats described in Appendix 1 to this
10 Order. If particular documents warrant a different format, the parties will cooperate to arrange
11 for the mutually acceptable production of such documents. The parties agree not to degrade the
12 searchability of documents as part of the document production process.

13 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

14 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
15 protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection
16 from discovery in this case or in any other federal or state proceeding. Disclosures among
17 defendants’ attorneys of work product or other communications relating to issues of common
18 interest shall not affect or be deemed a waiver of any applicable privilege or protection from
19 disclosure. For example, the mere production of privileged or work-product-protected
20 documents in this case as part of a mass production is not itself a waiver in this case or in any
21 other federal or state proceeding. A producing party may assert privilege or protection over
22 produced documents at any time by notifying the receiving party in writing of the assertion of
23 privilege or protection. Information that contains privileged matter or attorney work product
24 shall be returned immediately if such information appears on its face to have been inadvertently
25 produced or if requested.

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27 b) Communications involving trial counsel that post-date the filing of the complaint
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1 need not be placed on a privilege log. Communications may be identified on a privilege log by
2 category, rather than individually, if appropriate.

3 c) Activities undertaken in compliance with the duty to preserve information are
4 protected from discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

5 d) Nothing in this Agreement shall be interpreted to require disclosure of irrelevant
6 information or relevant information protected by the attorney-client privilege, work-product
7 doctrine, or any other applicable privilege or immunity. The parties do not waive any
8 objections to the production, discoverability, admissibility, or confidentiality of documents and
9 ESI.
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11 **9. MODIFICATION**

12 This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court
13 for good cause shown. Any such modified Stipulated Order will be titled sequentially as follows,
14 “First Modified Stipulated Order re: Discovery of Electronically Stored Information for Standard
15 Litigation,” and each modified Stipulated Order will supercede the previous Stipulated Order.
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17 **IT IS SO STIPULATED**, through Counsel of Record.
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1 Filer's Attestation: Pursuant to Civil L.R. 5-1(i)(3), I attest under penalty of perjury that
2 concurrence in the filing of the document has been obtained from each of its signatories.

3
4 Dated: January 21, 2019

Dated: January 21, 2019

5
6 By: /s/ Hao Ni
Hao Ni

By: /s/ Melody Drummond Hansen
Melody Drummond Hansen

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19 HYPERMEDIA NAVIGATION LLC

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Attorneys for Defendant
GOOGLE LLC

20
21 **IT IS ORDERED** that the foregoing Agreement is approved.

22
23 Dated: 1/22/2019



24 United States District Judge
25 Haywood S. Gilliam, Jr.

26
27 #

APPENDIX 1
PRODUCTION FORMAT AND METADATA

1. **Production Components.** Productions shall include, PDFs with OCR recognition, or single page TIFFs, Text Files, an ASCII delimited metadata file (.txt, .dat, or .csv) and an image load file that can be loaded into commercially acceptable production software (e.g., Concordance).
2. **Image Load File** shall contain the following comma-delimited fields: BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK, FOLDER BREAK, BOX BREAK, PAGE COUNT.
3. **Metadata Fields and Metadata File.** Each of the metadata and coding fields set forth below that can be extracted shall be produced for each document. The parties are not obligated to populate manually any of the fields below if such fields cannot be extracted from a document, with the exception of the following: BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, and CUSTODIAN. The metadata file shall be delimited according to the following characters:
 - Delimiter = ¶ (ASCII:020)
 - Text-Qualifier = þ (ASCII:254)
 - New Line = ® (ASCII:174)

Field Name	Field Description
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CUSTODIAN	Includes the Individual (Custodian) from whom the documents originated and all Individual(s) whose documents de-duplicated out (De-Duped Custodian).
SUBJECT	Subject line of email
TITLE	Title from properties of document
DATESENT	Date email was sent (format: MM/DD/YYYY)
TO	All recipients that were included on the “To” line of the email
FROM	The name and email address of the sender of the email

CC	All recipients that were included on the “CC” line of the email
BCC	All recipients that were included on the “BCC” line of the email
AUTHOR	Any value populated in the Author field of the document properties
FILENAME	Filename of an electronic document (Edoc or attachment)
DATEMOD	Date an electronic document was last modified (format: MM/DD/YYYY) (Edoc or attachment)
DATECREATED	Date the document was created (format: MM/DD/YYYY) (Edoc or attachment)
NATIVELINK	Native File Link (Native Files only)

4. **TIFFs.** Documents that exist only in hard copy format shall be scanned and produced as TIFFs. Unless excepted below, documents that exist as ESI shall be converted and produced as TIFFs. Unless excepted below, single page Group IV TIFFs should be provided, at least 300 dots per inch (dpi) for all documents. Each TIFF image shall be named according to a unique corresponding Bates number associated with the document. Each image shall be branded according to the Bates number and the agreed upon confidentiality designation. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). TIFFs shall show all text and images that would be visible to a user of the hard copy documents.
5. **Text Files.** A single multi-page text file shall be provided for each document, and the filename should match its respective TIFF filename. A commercially acceptable technology for optical character recognition “OCR” shall be used for all scanned, hard copy documents. When possible, the text of native files should be extracted directly from the native file. Text files will not contain the redacted portions of the documents and OCR text files will be substituted instead of extracted text files for redacted documents.
6. **Image Load Files / Data Load Files.** Each TIFF in a production must be referenced in the corresponding image load file. The total number of documents referenced in a production’s data load file should match the total number of designated document breaks in the Image Load file(s) in the production. The total number of pages referenced in a production’s image load file should match the total number of TIFF files in the production. The total number of documents in a production should match the total number of records in the data load file.
7. **Bates Numbering.** All images must be assigned a unique Bates number that is sequential within a given document and across the production sets.

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8. **Confidentiality Designation.** Responsive documents in TIFF format will be stamped with the appropriate confidentiality designations in accordance with the Protective Order in this matter. Each responsive document produced in native format will have its confidentiality designation identified in the filename of the native file.
 9. **Redaction Of Information.** If documents are produced containing redacted information, an electronic copy of the original, unredacted data shall be securely preserved in such a manner so as to preserve without modification, alteration or addition the content of such data including any metadata therein.
 10. **NATIVE FILE PRODUCTIONS.** Spreadsheets (e.g., MS Excel, Google Sheets) and delimited text files (e.g. comma-separated value (.csv) files and tab-separated value (.tsv) files) shall be produced in their native file format. TIFF images need not be produced unless the files have been redacted, in which instance such files shall be produced in TIFF with OCR Text Files. If good cause exists to request production of files, other than those specifically set forth above, in native format, the party may request such production and provide an explanation of the need for native file review, which request shall not unreasonably be denied. Any native files that are produced shall be produced with a link in the NativeLink field, along with extracted text and applicable metadata fields set forth in Appendix 1. A TIFF placeholder indicating that the document was provided in native format should accompany the database record. If a file has been redacted, TIFF images and OCR text of the redacted document will suffice in lieu of a native file and extracted text.
 11. **Proprietary Files.** To the extent a response to discovery requires production of ESI accessible only through proprietary software, the parties should continue to preserve each version of such information. The parties shall meet and confer to finalize the appropriate production format.
 12. **Production Media.** Documents shall be produced on external hard drives, readily accessible computer(s) or other electronic media ("Production Media"). Each piece of Production Media shall identify a production number corresponding to the production volume (e.g., "VOL001," "VOL002"), as well as the volume of the material in that production (e.g. "-001," "-002"). Each piece of Production Media shall also identify: (1) the producing party's name; (2) the production date; (3) the Bates Number range of the materials contained on the Production Media; and (4) the set(s) of requests for production for which the documents are being produced.